

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

MAY 19 2005



JAMES I. DALE,

CIV. 04-4153

Plaintiff,

vs.

OPINION AND ORDER

DARYL SLYHUIS, Interim Warden;
KELLY DAUGHTERS, Counselor;
BOB DOOLEY, Warden;
JOHN WALTERS, Lt.,

Defendants.

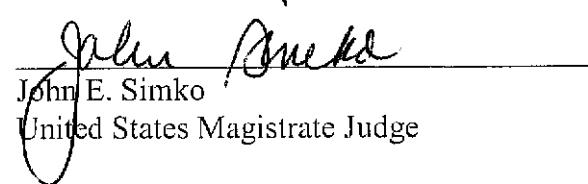
In his Motion for Appointment of Counsel (Doc. 7) Plaintiff requests the court appoint someone trained in the law to represent him. "Indigent civil litigants do not have a constitutional or statutory right to appointed counsel." Edgington v. Missouri Dep't of Corrections, 52 F.3d 777, 780 (8th Cir. 1995). The factors relevant to evaluating a request for appointment of counsel include "whether both the plaintiff and the court will benefit from the appointment of counsel, taking into account the factual and legal complexity of the case, the presence or absence of conflicting testimony, and the plaintiff's ability to investigate the facts and present his claim." Davis v. Scott, 94 F.3d 444, 447 (8th Cir. 1996).

Plaintiff would likely benefit from the assistance of counsel because he is not trained in the law. The court would not benefit from the assistance of counsel at this point in the proceedings. This case is not factually complex. Plaintiff, although incarcerated, is able to investigate the facts of his claim. It is not clear at the present time whether there will be conflicting testimony in this

case. The legal issues involved do not appear to be legally complex at this point in the proceedings. Considering all the relevant factors, and upon the record to-date, the Plaintiff's motion for appointment of counsel should be DENIED, without prejudice.

Dated this 19th May day of June, 2005.

BY THE COURT:


John E. Simko
United States Magistrate Judge

ATTEST:

JOSEPH HAAS, CLERK

By: Shelly Margulies, Deputy

(SEAL)